

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1061 of 2018

In

Criminal Appeal (SJ) No.1889 of 2018

Arising Out of PS. Case No.-19 Year-2012 Thana- KUNALI District- Supaul

Mahendra Prasad Yadav, Son of Late Satya Narayan Yadav, Resident of Village- Rajpur, P.O. Dagamara, P.S. Kunauli, District Supaul.

... .. Appellant/s

Versus

1. The State of Bihar
2. Yakti Narayan Yadav
3. Roop Narayan Yadav
4. Parmeshwar Yadav

All the three Private Opposite parties are son of Ganga Prasad Yadav.

5. Sudhir Yadav @ Sudhir Kr. Yadav, Son of Kukti Narayan Yadav.
6. Randhir Yadav @ Randhir Kumar Yadav, Son of Roop Narayan Yadav.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Amar Nath Yadav
For the State	:	Mr. A.K. Sinha, A.P.P.
For the Respondent	:	Mr. Lakhinder Kumar Yadav

Nos. 2 to 6

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 19-02-2019

Heard learned counsel appearing for the appellant, learned counsel appearing for private respondent Nos. 2 to 6 as well as learned Additional Public Prosecutor for the State, on I.A. No. 2590 of 2018, filed under Section 378(3) of the Code of Criminal Procedure, as well as on the point of admission.

Re. I.A. No. 2590 of 2018

I.A. No. 2590 of 2018 has been filed under Section



378(3) of the Code of Criminal Procedure for grant of leave to file and pursue this appeal against the judgment of acquittal.

The appellant-applicant happens to be the injured and informant of Kanauli (Dagamara) P.S. Case No. 19 of 2012 and, therefore, he has right to challenge the judgment of acquittal.

Accordingly, the appellant-applicant is permitted to pursue this criminal appeal.

In the aforesaid manner, I.A. No. 2590 of 2018 stands disposed of.

Re. Criminal Appeal (DB) No. 1061 of 2018

1. The appellant is aggrieved by impugned judgment of acquittal dated 13.3.2018 passed by Presiding Officer, Fast Track Court No. II, Supaul, in Sessions Trial No. 30 of 2014 by which and whereunder he acquitted the respondent Nos. 2 to 6 from the charges framed against them for the offences punishable under Sections 341, 323, 325, 307 and 504/34 of the Indian Penal Code.

2. The appellant lodged Kanauli (Dagamara) P.S. Case No. 19 of 2012 against the respondent Nos. 2 to 6 for the offences punishable under Sections 341, 323, 324, 325, 307, 379, 354 and 504/34 of the Indian Penal Code.



3. The appellant claimed that on 19.5.2012 at about 11:30 A.M., while the private respondent Nos. 2 to 6 were making construction on his land, he went there and requested them not to make construction till measurement of the land but respondent Nos. 2 to 6 became furious and respondent No. 3 caught his collar and ordered the others to kill him and, thereafter, respondent No. 2 gave one blow by means of sharp edged weapon, as a result whereof, he sustained injury and fell down on the ground. He further claimed that his younger brother, namely, Bhupendra Yadav, came there and raised alarm but respondent No. 3 gave one blow by means of *Farsa*, causing injury on his head and, thereafter, respondent No. 4 assaulted him by *Lathi*, as a result whereof, his legs were broken. He further claimed that his wife Awli Devi came running to save them but she was assaulted by above stated respondents by means of fists and slaps and respondent No. 5 snatched one *Hasuli* from her.

4. After institution of the case and after completion of the investigation, charge-sheet was submitted and, accordingly, private respondents were put on trial and they stood charged for the offences punishable under Sections 341/34, 323/34, 325/34 and 307/34 of the Indian Penal Code. Private



respondents denied the charges and claimed to be tried.

5. In course of trial, prosecution examined, altogether, four witnesses and one court witness was also examined. No evidence was adduced by private respondents in support of their defence but in the statement recorded under Section 313 of the Code of Criminal Procedure, they reiterated their innocence.

6. The learned trial court after evaluating the evidences available on the record found that the prosecution failed to prove its case beyond all shadows of reasonable doubt and, accordingly, the learned trial court acquitted the private respondents from the charges as framed against them.

7. Learned counsel appearing for appellant submits that the learned trial court failed to appreciate the prosecution evidences in its right perspective. He submits that according to prosecution case, appellant as well as his wife and younger brother sustained injury in the alleged occurrence as appellant and his wife were examined by the prosecution and both the aforesaid injured witnesses fully supported the prosecution case. He further submits that the court examined doctor as court witness and the aforesaid court witness proved the injury reports of all the injured as Ext. 2 series. He submits that the



depositions of the injured witnesses as well as Ext. 2 series, clearly, go to prove that the injured had sustained injury but the learned trial court on flimsy ground acquitted the respondent Nos. 2 to 6. He submits that no doubt, one of the injureds was not examined by the prosecution in course of trial but, admittedly, two injureds were examined as prosecution witnesses and they, specifically, stated that it were respondent Nos. 2 to 6, who assaulted them. He further submits that the learned trial court took the minor contradictions into consideration for writing the judgment of acquittal, which is not in accordance with law and, therefore, in the aforesaid circumstance, the impugned judgment of acquittal cannot sustain in the eye of law.

8. On the other hand, learned counsel appearing for private respondents submits that the appellant, while examined as P.W. 2, admitted that the respondent Nos. 2 to 6 were in possession of the disputed land. He further submits that, moreover, first information report itself goes to show that the respondent Nos. 2 to 6 were making construction over the disputed land and when the appellant made objection, the alleged occurrence took place. Therefore, the aforesaid fact clearly goes to show that it was appellant and



his family members, who were aggressor. He further submits that apart from the aforesaid facts, there are several contradictions occurred in the depositions of prosecution witnesses and, therefore, there is need to interfere into the impugned judgment of acquittal.

9. Having heard the contentions of both the parties, we went through the record as well as Lower Court Records.

10. In our view, this criminal appeal can be disposed of at the admission stage itself.

11. The first information report goes to show that the alleged occurrence took place when the appellant went to the disputed land and made attempt to stop the constrction work and, therefore, the aforesaid fact goes to show that at the time of alleged occurrence, the respondent Nos. 2 to 6 were in possession of the disputed land. Moreover, the wife of the appellant was examined by the prosecution as P.W. 2 and she very clearly admitted in her deposition that there was house of respondent Nos. 2 to 6 on the disputed land and, furthermore, the aforesaid P.W. 2 also admitted that the case was brought to dispossess the respondent Nos. 2 to 6 from the disputed land. The aforesaid admission of P.W. 2 goes to show that the



prosecution party was aggressor and, in our view, the learned trial court rightly acquitted the respondent Nos. 2 to 6 from the charges framed against them.

12. On the basis of aforesaid discussions, we find no ground to interfere into the impugned judgment of acquittal and, accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
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